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10/757,910

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Wolfgang Neuberger

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BOLESH J. SKUTNIK  
CERAMOPTEC INDUSTRIES, INC.  
515 SHAKER RD.  
EAST LONGMEADOW, MA 01028

EXAMINER

FARAH, AHMED M

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

03/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/757,910 | <b>Applicant(s)</b><br>NEUBERGER, WOLFGANG |  |
|                              | <b>Examiner</b><br>Ahmed M. Farah    | <b>Art Unit</b><br>3735                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

**Note:** *Objectionable claim language (Presence of possible 112, sixth paragraph, limitations)*

*Claims 1, 10 and 16 are objected to because of the following informalities: claim 1 recites "means to independently control" in line 6; and claims 10 and 16 recite "means to measure a power output" in lines 4, respectively. It is not clear to the examiner whether the applicants want to invoke the 35 U.S.C. 112, sixth paragraph.*

*When it is not clear whether a claim limitation should be treated under 35 U.S.C. 112, sixth paragraph, determining the patentability of that claim is difficult because the scope of the claim and the relevance of the prior art cannot be readily determined. Applicants have an opportunity and obligation to define their inventions precisely during proceedings before the PTO. They are required to specify their inventions, consistent with the guidelines described in MPEP 2181, when a claim limitation invokes 35 U.S.C. 112, sixth paragraph.*

*A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph if it meets the following 3-prong analysis:*

- (A) the claim limitations must use the phrase "means for" or "step for";*
- (B) the "means for" or "step for" must be modified by functional language; and*
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.*

*If the applicants wish to have the claim limitations under 112, sixth paragraph interpretation, they must: show why the claim language properly invokes 35 U.S.C. 112, sixth paragraph; identify the function; and identify the corresponding structure. They must either: (A) amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines; or (B) show that even though the phrase "means for" or "step for" is not used, the*

*claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 U.S.C. 112 , sixth paragraph. See Watts v. XL Systems, Inc., 232 F.3d 877, 56 USPQ2d 1836 (Fed. Cir. 2000).*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biel US Patent No. 6,048,359 in view of Svanberg et al. US Patent No. 7,037,325.

Biel discloses a phototherapeutic apparatus and method of use, the apparatus comprising: light delivery probes **14**; a plurality of radiation sources **22**; multiple radiation output ports (see Figs 2-4); and means **12** for controlling power output levels of the radiation emitted through each radiation output port as claimed (see Fig. 1 and col. 3, lines 34-40). Biel does not teach light delivery waveguides disposed between the radiation sources and output ports. The light sources are disposed proximate the distal end of the delivery probe(s). Hence, Biel eliminates the need for using waveguides to conduct optical energy from the sources to the output ports.

However, the use of optical fibers disposed between a light source and an output port to transmit optical energy from light source to a treatment site is known in the art. Svanberg et al. disclose an alternative light delivery apparatus comprising plurality of

waveguides **7,6**, disposed between multiple light sources **9b** and light output ports for transmitting optical energy from the light sources **9b** to the output delivery ports.

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to dispose optical waveguide(s) to between separate light source(s) and light output ports as an equivalent alternative means to transmit optical energy.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

US Patent No. 6,416,531 to Chen, see Fig. 1.

US Patent No. 7,282,049 to Orszulzk et al., see Figs. 1 and 2.

US Patent No. 6,128,525 to Zeng et al., see Fig. 1.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/  
Primary Examiner, Art Unit 3735

March 17, 2008

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